

At this juncture of the proceeding, the Appeals Board agrees with the Administrative Law Judge's conclusion that claimant injured her right arm in March 1995 as the result of a new and distinct accident which occurred while claimant was helping to dress a patient. Claimant testified that incident was the first time she experienced any problems with her right arm. Within days of the accident, claimant terminated her employment with respondent.

The Appeals Board also agrees with the Administrative Law Judge's conclusion that claimant failed to provide respondent with timely notice of the March 1995 accident. Claimant testified she did not notify respondent of the March 1995 incident. In fact, the incident did not come to light until claimant testified at the July 1997 hearing. As required by K.S.A. 44-520, notice of an accidental injury must be provided to the employer within ten days of its occurrence, unless the employer has actual knowledge or claimant can establish that the failure to give said notice was due to just cause. In this instance, just cause cannot save claimant as notice was not given within the additional 75 days allotted when just cause exists for failing to provide notice within the first ten days of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated July 16, 1997, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Gregory D. Worth, Lenexa, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director